

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)

Order No. 10 -xxx -SW

Messrs. Oscar Salter, Jr.)
& Charles Edward)
101 Evergreen Retirement Road)
Evergreen, Alabama 36401)
_____)

FINDINGS OF FACTS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, (2006 Rplc. Vol.), and the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2006 Rplc. Vol. and 2009 Cum Supp.), and the ADEM Administrative Code promulgated hereunder, the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") makes the following finding of facts:

1. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
2. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.) and Ala. Code § 22-27-9(a) (2006 Rplc. Vol. and 2009 Cum Supp.), the Department is the state agency authorized to administer and enforce the provisions of the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2006 Rplc. Vol. and 2009 Cum. Supp.).

3. Ala. Code §22-27-2(36) (2006 Rplc. Vol. and 2009 Cum. Supp.) defines an “unauthorized dump” as “any collection of solid wastes either dumped or caused to be dumped or placed on any public or private property, whether or not regularly used, and not having a permit from the Department.”

4. Ala. Code § 22-27-4(b) (2006 Rplc. Vol. and 2009 Cum. Supp.) states the following: “The creation, contribution to, or operation of unauthorized dumps shall be prohibited, removed, enjoined...”

5. Ala. Code § 22-27-10(b) (2006 Rplc. Vol. and 2009 Cum. Supp.) states the following: “The creation, contribution to, or operation of an unauthorized dump is declared to be a public nuisance per se, a menace to public health, and a violation of this article.”

6. ADEM Admin. Code r. 335-13-1-.13 (1) (a) prohibits open or unauthorized dumps.

7. On April 15, 2009, Department personnel conducted an inspection and documented the existence of an unauthorized solid waste dump (hereinafter “UAD”) located on the property of Messrs. Oscar Salter, Jr. and Charles Edward (hereinafter “Messrs. Salter and Edward”) within parcel 21-21-03-05-0-000-007.000 off of U. S. Highway 84 in Belleville, Conecuh County, Alabama. Property ownership was determined by a review of Conecuh County records. The UAD consisted of construction/demolition waste, household waste, and less than 100 scrap tires.

8. On April 28, 2009, the Department issued a Notice of Violation (hereinafter “NOV”) to Messrs. Salter and Edward for operating an UAD.

9. The Department did not receive a response to the April 28, 2009, NOV.

10. On August 20, 2009, the Department issued a Failure to Respond letter to Messrs. Salter and Edward, which requested a response to the April 28, 2009, NOV.

11. The Department did not receive a response to the August 20, 2009, Failure to Respond letter.

CONTENTIONS

Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by Messrs. Salter and Edward; the economic benefit which delayed compliance may confer upon Mr. Hopkins; the nature, extent, and degree of success of Messrs. Salter and Edward's efforts to minimize or mitigate the effects of such violation upon the environment; Messrs. Salter and Edward's history of previous violations; and the ability of Messrs. Salter and Edward's to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** Messrs. Salter and Edward did not comply with the requirements applicable to solid waste disposal. The Department is unaware of any irreparable harm to the environment, any threat to human health, or any threat to the safety of the public as a result of these violations.

B. THE STANDARD OF CARE: Messrs. Salter and Edward failed to abide by the applicable solid waste requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if Messrs. Salter and Edward have realized a significant economic benefit as a result of the violations noted.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any attempts by Messrs. Salter and Edward to mitigate any potential effects upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is unaware of previous violations of solid waste requirements by Messrs. Salter and Edward.

F. THE ABILITY TO PAY: Messrs. Salter and Edward have not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$5,000.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other UAD, as follows (see attachment A):

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Unauthorized Solid Waste Dump	\$100 - \$25,000

ORDER

Based on the foregoing findings of fact and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-4(b), 22-27-7, and 22-27-11 it is hereby ordered:

A. That, not later than forty-five (45) days after issuance of this Order, Messrs. Salter and Edward shall pay to the Department a civil penalty in the amount of \$5,000.00 for the violations cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P O Box 301463
Montgomery, Alabama 36130-1463

All checks shall reference Messrs. Salter and Edward's names and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance of this Order and continuing each and every day thereafter, Messrs. Salter and Edward shall cease and desist from operating an UAD.

C. That, within thirty days of the issuance of this Order, Messrs. Salter and Edward shall submit an abatement plan to the Department in accordance with ADEM Admin. Code Div. 335-13. This plan shall include a schedule for abatement completion. Messrs. Salter and Edward shall document abatement activities by submitting the following to the Department within thirty days of abatement completion:

1. Time period in which the abatement activities occurred.

2. Total volume of waste removed from the property.
3. Documentation that all regulated waste, to include both surface and subsurface waste, was removed from the property.
4. A copy of waste receipts documenting that all regulated waste was taken to a permitted landfill.
5. Photographs of the site, before, during, and after abatement.
6. Documentation that adequate sedimentation controls were employed to prevent erosion from disturbed areas resulting from the remediation activities.
7. Documentation that the site has been secured to prevent any future illegal dumping.

D. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Messrs. Salter and Edward for the violations cited herein.

E. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against Messrs. Salter and Edward for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this ____ day of _____, 2010.

John P. Hagood
Director

ATTACHMENT A

Penalty Calculation Worksheet

Messrs. Oscar Salter, Jr.
& Charles Edward
101 Evergreen Retirement Road
Evergreen, AL 36401

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Operation of an Unauthorized Dump	1	\$5,000	\$0	\$0
Totals:	1	\$5,000	\$0	\$0

Economic Benefit*: \$0
Mitigating Factors*: \$0
Ability to Pay*: \$0
Other Factors*: \$0

Total Civil Penalty: \$5,000

Footnotes

* See the "Findings" of the Order

CERTIFICATE OF SERVICE

I, _____, hereby certify that I have this date
served the foregoing Administrative Order on _____
by regular United States Mail, properly addressed and postage prepaid to:

Messrs. Oscar Salter, Jr.
& Charles Edward
101 Evergreen Retirement Road
Evergreen, Alabama 36401

Done this _____ day of _____, 2010.

Name